NOTES

WASHINGTON NOTES

THE UNION PACIFIC DECISION

What is probably the most important opinion since the decisions in the Standard Oil and American Tobacco cases was handed down by the Supreme Court of the United States on December 2 (No. 446, October term, 1912) in the so-called Union Pacific case. The point at issue was whether the provisions of the Sherman anti-trust act of 1890 had been violated through the purchase by the Union Pacific R.R. Co. of a controlling interest in the capital stock of the Southern Pacific Co., whereby the Union Pacific was practically able to direct the affairs of the Southern Pacific. The total holding of Southern Pacific stock by the Union Pacific amounted to 750,000 shares or about 37½ per cent—subsequently increased to 46 per cent—of the outstanding stock of the Southern Pacific. This stock was held for the Union Pacific by one of its proprietary companies, the Oregon Short Line R.R. Co. In the case as brought before the Supreme Court, it was shown that the two roads more or less parallel one another and that the control of the Southern Pacific by the Union Pacific practically eliminated competition between the two systems, thus making the combination one in restraint of trade under the anti-trust law. In deciding the case, the court considered carefully the question whether or not in such an instance of control it was necessary that rates or prices should have been manipulated in order to create a monopoly. It reached the conclusion that—

> competition between two such systems consists not only in making rates, which, so far as the shipper was concerned, the proof shows, were by agreement fixed at the same figure whichever route was used, and then apportioned among the connecting carriers upon a basis satisfactory to themselves, but includes the character of the service rendered, the accommodation of the shipper in handling and caring for freight, and the prompt recognition and adjustment of the shippers' claim. . . . . The maintenance of these by rival companies promoted their business and increased their revenues. The inducement to maintain these points of advantage—low rates, superiority of service and accommodation—did not remain the same in the hands of a single dominating and common ownership as it was when they were the subjects of active promotion by competing owners whose success depended upon their accomplishment. The consolidation of two great competing systems of railroad engaged in interstate commerce by a transfer to one of a dominating stock

interest in the other creates a combination which restrains interstate commerce within the meaning of the statute because, in destroying or greatly abridging the free operation of competition theretofore existing, it tends to higher rates . . . . nor does it make any difference that rates for the time being may not be raised and much money be spent in improvements after the combination is affected. It is the scope of such combinations and their power to suppress or stifle competition or create monopoly which determines the applicability of the act.

The significant feature of the decision undoubtedly is the doctrine that the creation of potential monopoly or of the conditions under which the results of monopoly may be made manifest, is as obnoxious to the Sherman law as the actual raising of prices or the visiting of hardship upon consumers as a result of action on the part of combining concerns seeking to create the monopoly for that particular purpose. This is a decided step in advance of the doctrine of monopoly laid down in the Standard Oil and Tobacco decisions. The court also goes farther than it did in those decisions with reference to providing a remedy. It states that—

in applying the general rule of relief we must deal with each case as we find it, and in the present one the object to be attained is to restrain the operation of, and effectually terminate, the combination created by the transfer of the stock to the Union Pacific Co. In this view, the decree to be entered in the District Court shall provide an injunction against the right to vote this stock while in the ownership or control of the Union Pacific Co., or any corporation owned by it, or while held by any corporation or person for the Union Pacific Co., and forbid any transfer or disposition thereof in such wise as to continue its control, and shall provide an injunction against the payment of dividends upon such stock while thus held, except to a receiver to be appointed by the District Court to collect and hold such dividends until disposed of by the decree of the court.

The court then goes on to discuss the question what plan for the reorganization of the Union Pacific shall be developed, and how the reorganization may be shaped so as to retain to the road its Central Pacific connection from Ogden to San Francisco. The opinion further directs that such plan as may be determined upon in this connection shall be submitted within three months, the justices apparently taking the view that nothing is to be considered as preventing the government from formulating such a plan and offering it at the appointed time, provided that it contains nothing objectionable as judged by the standards of the Sherman anti-trust law. Thus, in providing a remedy, the court likewise goes farther than it did in the Oil and Tobacco cases, since it not only practically orders a dissolution as was done in those cases, although

under somewhat different conditions, but it provides that the control of the Southern Pacific stock shall be of no particular service to those who now possess it, inasmuch as they are not allowed to vote the shares or to receive the dividends. The action taken is, therefore, decidedly in advance of anything thus far accomplished in the direction of anti-trust regulation by the Supreme Court, in its interpretation of the Sherman law.

RAILROAD MONOPOLY AND THE TRUST LAW

Another important phase of the railway regulation question has been submitted to Congress in connection with the demand for an investigation of the New York, New Haven & Hartford R.R., and for subsequent legislation. This demand for investigation grows out of recent serious accidents upon the road in question and the belief prevalent in New England that the succession of accidents is due to the monopolized character of the line and the absence of healthy competition and of the stimulating effect of such competition in producing efficiency. The demand for an investigation of the road is not in itself of great importance nor can the terms or tone of the resolution providing for the investigation now pending before the Rules Committee of the House of Representatives be wholly approved. Already several investigations are under way through other than congressional agencies. Taken together, they constitute a comprehensive scheme of inquiry, including as they do the operations of the federal grand jury in New York City, the work of a section of the Interstate Commerce Committee at Boston, and other minor elements, to say nothing of the discussion of the New Haven situation now in progress in two or more legislatures in the New England states. The large significance of the present state of things is found in the evident disposition to break up the New Haven monopoly of transportation and to insist upon the restoration of competition, if that be possible, through the cancellation of a recent agreement between the New Haven and the (Canadian) Grand Trunk Ry. whereby the latter was debarred from extending its line through New England in competition with the New Haven. In the past, there has been a disposition to take the view that enforcement of proper rate control by the Interstate Commerce Commission furnished sufficient protection for the public against railroad oppression and that it was not necessary to go farther by attempting to compel the observance of regulations against combination such as were desired in the industrial world. Congress seems now to be of a mind, as does the Supreme Court, to apply the Sherman act as well as the Interstate Commerce act to the carriers.

REVISION OF THE TARIFF BEGUN

Announcement of a series of hearings on the tariff question, before the Ways and Means Committee of the House of Representatives, to begin on January 6, 1913, and to extend throughout that month, not only is the first step in the revision of the tariff, but also indicates a return to the method of investigation and revision in vogue in past operations of the same sort. The announcement of hearings does not materially differ from that which was made at the time the Payne-Aldrich tariff was first taken up for consideration. The time allowed is a little longer than before, although not very much. Two or three days are allotted to each of the schedules of the tariff in alphabetical order, and it is assumed that producers who wish to be heard will present themselves without any special invitation. This plan of action follows precedent, the same method having been adopted under Republican control four years ago. The question of how the revision is to be carried through and whether it will be managed in the same way as on the last occasion is proving of fundamental interest to the business community. The assumption had been that the Underwood bills already adopted by the House, and either defeated in the Senate or passed there and vetoed by the President, would constitute the backbone of the new measure. Announcement of the hearings has led some to suppose that such would not be the case. The inference does not altogether follow, as it is being quietly asserted by political leaders that the hearings are more to satisfy public opinion than to get information. It is, however, certain that changes will be made in the Underwood rates wherever evidence indicates that this should be done, or where party necessity requires it. On the other hand, the defeat of the tariff commission appropriation at the last session of Congress assures that the work will be carried on without the "scientific" assistance which has figured so largely in current discussion for some time past.

A NEW BANKING BILL

Some advance has been made during the past few weeks in the development of banking and currency legislation, by the reaching of a determination that hearings shall be held before a subcommittee of the House of Representatives Banking and Currency Committee, vested some time ago with the power to develop legislation on this subject. The hearings are to begin early in January, and at them discussion will be had with representatives of the principal banking, wholesaling, retailing, farming, and labor organizations of the country. The purpose of these hearings is to ascertain to what extent the various commercial

and industrial interests have made up their minds with reference to banking reform, both in general terms and as regards the formulation of a distinct bill on the subject. In addition to the announcement of the hearings there has also been given to the public a statement that President-elect Wilson desires that immediate action shall be taken, and that the banking and currency question shall be dealt with at the special session of Congress which is to meet in March or April next. The attitude of the President-elect and of the House leaders practically guarantees an immediate effort to pass some measure through Congress at the earliest possible date. Prospects now favor the conclusion of the hearings in February, and the subsequent reporting of a bill either at the end of the short session which closes March 4, or early in the special session. If this bill proves satisfactory to the party managers, it would be reasonable to expect a readoption by the Banking and Currency Committee of the new House which will meet for the first time at the special session. In the natural course of events, this committee will probably be identical with the committee in the present Congress—save in so far as the retirement of old members may necessitate the substitution of new ones—so that there would be no reason to doubt the ratification of what had been done by the present committee. This would insure very early action in starting the measure in the new Congress and would to that extent increase its chances of success at the first session.

REVIVAL OF "GREENBACKISM"

An incident of crucial significance in connection with the effort for banking reform is, however, seen in the well-authenticated attempt of Mr. William J. Bryan to secure the adoption by members of the Democratic party in Congress of a banking plan of his own in opposition to each and all of the various rival banking plans that have been thus far suggested. Mr. Bryan's plan relates almost entirely to the issue of notes. He desires to have the power of note issue placed exclusively in the hands of the government, and would require that, in order to get notes, banks be compelled to make a showing that they possess an adequate amount of commercial paper of specified kinds. When this had been demonstrated to the satisfaction of the designated local officers, the government would deposit in the bank making the application circulating notes to an amount equal to that for which the bank had made application. These notes would be redeemable at the Treasury and would constitute a single uniform government currency. On the whole, the plan thus suggested, although refined in various particulars as compared with the various Bryan plans that have been urged in the past, is a revival, under

a different name, of the original greenback or government legal-tender currency idea that has figured so largely in times past in connection with the proposals of the radical wing of the Democratic party. The reappearance of this scheme constitutes a serious threat against the success of the party in dealing with the currency question; and is admitted to open before President-elect Wilson a problem the inevitableness of which must be recognized and met, if Mr. Wilson is not to lose the confidence of the conservative element in the community. Thus far he has made no positive announcement of policy beyond the expression of his desire that the banking question shall be dealt with at the special session of Congress in the coming spring.

PANAMA CANAL TOLLS

President Taft has formally completed the arrangements for opening the Panama Canal, by issuing his proclamation establishing the rate of toll for vessels passing through the waterway at $1.20 per net registered ton. The action is in accordance with the recommendations of Professor Emory R. Johnson, the government's Isthmian Canal expert, who has just completed an elaborate inquiry into the subject. Practically the substance of his investigation is contained in Senate Document No. 575 (62d Cong., 2d sess.), but a fuller treatment will shortly be issued. Professor Johnson reaches some important conclusions apart from the findings which relate to the amount of the tolls and which have led him to suggest a rate of charge decidedly in excess of the minimum fixed by Congress. These findings are nowhere more noteworthy than in those passages which recommend a flat, uniform charge to domestic and foreign vessels alike, and which thus repudiate the action of Congress in directing that the tolls be remitted to American vessels engaged in the coasting trade. Of considerable importance also is Professor Johnson's finding that the arrangements for coaling and other matters relating to the passage of vessels through the canal will be of quite as great importance in determining the choice of the Panama instead of the Suez route to the Orient, as are the rates of charge for tolls. The effect of the report has already been seen in the renewal of the attempt in Congress to secure the consideration of a measure withdrawing the favors granted to American vessels in the original canal act. The uneasiness and uncertainty in legislative circles with reference to the unwise action already taken have been increased by the filing of the British government's protest through the Department of State against the proposed remission of tolls. This protest, couched

in vigorous but courteous language, has not yet been made known to Congress, but its contents have been given to the public and have had even more effect than would have been the case had they been incorporated into a presidential message. Great Britain demands, and will insist upon, the arbitration of the case if we are not willing ourselves to rectify the injustice done. It is quite generally conceded by those who have closely examined the American side of the case that representatives of the United States would stand an exceedingly slender chance in such an arbitration.

PHILIPPINE INDEPENDENCE AND THE CHURCH

The issue between advocates and opponents of Philippine independence has now been definitely joined. President Taft in his general message to Congress (December 6) devotes large space to the subject, as does Secretary of War Stimson in his annual report, made public December 9. Both the message and the report take direct issue with the Jones bill (H.R. 22, 143, 62d Cong., 2d sess.) which proposes to grant independence to the Islands after a probationary period of eight years, during which preparation is made for the change. The President and the Secretary assert that to do what is thus suggested in the Jones bill would be to abandon a trust for civilization placed in our hands, whether fortunately or unfortunately, but accepted nevertheless by the United States. They dwell largely upon the good that is being done in the American occupation of the Philippines and the advances in education, sanitation, and municipal improvements under the existing régime. This advance, they claim, would be lost were the government of the Islands to be placed in native hands again. The weak part of the argument lies in the assertion that there would be complete retrogression in the event that the United States should withdraw from the Islands, or that nothing would be done by a native government in the direction in which we have been working. Such statements are of course pure conjecture and without any support, further than that of mere opinion, while there is abundance of well-founded assertion to the contrary. On the other hand, a more powerful influence than that of argument has been introduced into the situation. The Catholic church, always profoundly hostile to independence, has set at work powerful influences to block the progress of the independence bill, since it is feared that such a change of sovereignty would be injurious to the church itself and to the large holdings of the religious orders. The struggle over the bill is likely therefore to furnish lessons of unusual interest, as it will afford a test of the existing power of the church in American federal affairs.